

LUIS N. JACO
Claimant

VS.

IBP, INC.
Respondent

AND

SELF INSURED
Insurance Carrier

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of the preliminary hearing before Administrative Law Judge Thomas F. Richardson on December 20, 1994 and exhibits attached thereto.

ISSUES

- (1) Whether the claimant's injury to his back arose out of and in the course of his employment.
- (2) Whether notice was properly given.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented and for purposes of preliminary hearing, the Appeals Board finds:

- (1) Based upon the testimony of the claimant, medical records of Dr. Mohsen and nature of the accident, the Appeals Board finds that the claimant met his burden of proof in establishing an injury to the claimant's back which arose out of and in the course of his employment.

Claimant suffered an injury on September 14, 1993 when he slipped and fell while operating a skinning machine. As he fell he caught his hand in the machine and suffered a serious injury to his hand. Claimant testified he also struck and injured his low back. Respondent disputes only the claim of injury to the low back, denying the injury and denying notice.

Claimant testified that at the time of the injury he notified the company nurse he had injured his back. Claimant also testified that he repeatedly requested treatment for his back. The Application for Hearing filed three weeks after the accident claims injury to the back. Although early medical records do not mention the back injury, it appears reasonable in this particular context to conclude the immediate need for treatment to the hand overshadowed the low back injury. Dr. Aly M. Mohsen did find permanent injury to the low back.

- (2) With regard to notice, K.S.A. 44-520 provides that actual knowledge of the accident by the employer or employer's duly authorized agent shall render the giving of such notice unnecessary. The Appeals Board finds that based on the evidence in this case, the respondent had actual notice of the accident and, therefore, claimant has met his burden of proof in establishing notice pursuant to K.S.A. 44-520.

K.S.A. 44-510 requires the respondent in a compensable workers compensation claim to provide all reasonable and necessary medical treatment to cure and relieve the effects of an injury. The record contains ample evidence to support the finding of Administrative Law Judge Richardson that the claimant was entitled to treatment for his back condition as well as a review of his symptoms from the hand injury by a plastic surgeon.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Thomas F. Richardson, dated December 21, 1994, should be and is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May, 1995

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: John D. Jurcyk, Lenexa, KS
Frederick Greenbaum, Kansas City, KS
Stanley R. Ausemus, Emporia, KS
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director